

AN ACT

relating to certain facilities and care providers, including providers under the state Medicaid program; providing penalties.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

ARTICLE 1. HOME AND COMMUNITY SUPPORT SERVICES AGENCIES

SECTION 1.01. Section 142.001, Health and Safety Code, is amended by adding Subdivisions (11-a), (11-b), and (12-a) to read as follows:

(11-a) "Department" means the Department of Aging and Disability Services.

(11-b) "Executive commissioner" means the executive commissioner of the Health and Human Services Commission.

(12-a) "Home and community support services agency administrator" or "administrator" means the person who is responsible for implementing and supervising the administrative policies and operations of the home and community support services agency and for administratively supervising the provision of all services to agency clients on a day-to-day basis.

SECTION 1.02. Section 142.0025, Health and Safety Code, is amended to read as follows:

Sec. 142.0025. TEMPORARY LICENSE. If a person is in the process of becoming certified by the United States Department of Health and Human Services to qualify as a certified agency, the department may issue a temporary home and community support

services agency license to the person authorizing the person to provide certified home health services. A temporary license is effective as provided by ~~[board]~~ rules adopted by the executive commissioner.

SECTION 1.03. Section 142.009, Health and Safety Code, is amended by adding Subsections (a-1) and (i) and amending Subsection (g) to read as follows:

(a-1) A license applicant or license holder must provide the department representative conducting the survey with a reasonable and safe workspace at the premises. The executive commissioner may adopt rules to implement this subsection.

(g) After a survey of a home and community support services agency by the department, the department shall provide to the home and community support services ~~[chief executive officer of the]~~ agency administrator:

(1) specific and timely written notice of the official findings of the survey, including:

(A) the specific nature of the survey;

(B) any alleged violations of a specific statute or rule;

(C) the specific nature of any finding regarding an alleged violation or deficiency; and

(D) if a deficiency is alleged, the severity of the deficiency;

(2) information on the identity, including the name ~~[signature]~~, of each department representative conducting or ~~[r]~~ reviewing ~~[, or approving]~~ the results of the survey and the date on

1 which the department representative acted on the matter; and

2 (3) if requested by the agency, copies of all
3 documents relating to the survey maintained by the department or
4 provided by the department to any other state or federal agency that
5 are not confidential under state law.

6 (i) Except as provided by Subsection (h), the department may
7 not renew an initial home and community support services agency
8 license unless the department has conducted an initial on-site
9 survey of the agency.

10 SECTION 1.04. The heading to Section 142.0091, Health and
11 Safety Code, is amended to read as follows:

12 Sec. 142.0091. ~~[SURVEYOR]~~ TRAINING.

13 SECTION 1.05. Section 142.0091, Health and Safety Code, is
14 amended by amending Subsection (b) and adding Subsection (c) to
15 read as follows:

16 (b) In developing and updating the training required by
17 Subsection (a) [this section], the department shall consult with
18 and include providers of home health, hospice, and personal
19 assistance services, recipients of those services and their family
20 members, and representatives of appropriate advocacy
21 organizations.

22 (c) The department at least semiannually shall provide
23 joint training for home and community support services agencies and
24 surveyors on subjects that address the 10 most common violations of
25 federal or state law by home and community support services
26 agencies. The department may charge a home and community support
27 services agency a fee, not to exceed \$50 per person, for the

JBEE
m/er

S.B. No. 223

1 training.

2 SECTION 1.06. Subchapter A, Chapter 142, Health and Safety
3 Code, is amended by adding Section 142.0104 to read as follows:

4 Sec. 142.0104. CHANGE IN APPLICATION INFORMATION. (a) If
5 certain application information as specified by executive
6 commissioner rule changes after the applicant submits an
7 application to the department for a license under this chapter or
8 after the department issues the license, the license holder shall
9 report the change to the department and pay a fee not to exceed \$50
10 not later than the time specified by executive commissioner rule.

11 (b) The executive commissioner by rule shall:

12 (1) specify the information provided in an application
13 that a license holder shall report to the department if the
14 information changes;

15 (2) prescribe the time for reporting a change in the
16 application information required by Subdivision (1);

17 (3) establish which changes required to be reported
18 under Subdivision (1) will require department evaluation and
19 approval; and

20 (4) set the amount of a late fee to be assessed against
21 a license holder who fails to report a change in the application
22 information within the time prescribed under Subdivision (2).

23 SECTION 1.07. Subsection (a), Section 142.011, Health and
24 Safety Code, is amended to read as follows:

25 (a) The department may deny a license application or suspend
26 or revoke the license of a person who:

27 (1) fails to comply with the rules or standards for

S.B. No. 223

1 licensing required by this chapter; or

2 (2) engages in conduct that violates Section 102.001,
3 Occupations Code [~~161.091~~].

4 SECTION 1.08. Subsections (a), (b), and (c), Section
5 142.012, Health and Safety Code, are amended to read as follows:

6 (a) The executive commissioner [~~board, with the~~
7 ~~recommendations of the council,~~] shall adopt rules necessary to
8 implement this chapter. The executive commissioner may adopt rules
9 governing the duties and responsibilities of home and community
10 support services agency administrators, including rules regarding:

11 (1) an administrator's management of daily operations
12 of the home and community support services agency;

13 (2) an administrator's responsibility for supervising
14 the provision of quality care to agency clients;

15 (3) an administrator's implementation of agency policy
16 and procedures; and

17 (4) an administrator's responsibility to be available
18 to the agency at all times in person or by telephone.

19 (b) The executive commissioner [~~board~~] by rule shall set
20 minimum standards for home and community support services agencies
21 licensed under this chapter that relate to:

22 (1) qualifications for professional and
23 nonprofessional personnel, including volunteers;

24 (2) supervision of professional and nonprofessional
25 personnel, including volunteers;

26 (3) the provision and coordination of treatment and
27 services, including support and bereavement services, as

1 appropriate;

2 (4) the management, ownership, and organizational
3 structure, including lines of authority and delegation of
4 responsibility and, as appropriate, the composition of an
5 interdisciplinary team;

6 (5) clinical and business records;

7 (6) financial ability to carry out the functions as
8 proposed;

9 (7) safety, fire prevention, and sanitary standards
10 for residential units and inpatient units; and

11 (8) any other aspects of home health, hospice, or
12 personal assistance services as necessary to protect the public.

13 (c) The initial minimum standards adopted [~~by the board~~]
14 under Subsection (b) for hospice services must be at least as
15 stringent as the conditions of participation for a Medicare
16 certified provider of hospice services in effect on April 30, 1993,
17 under Title XVIII, Social Security Act (42 U.S.C. Section 1395 et
18 seq.).

19 SECTION 1.09. As soon as practicable after the effective
20 date of this Act but not later than July 1, 2012, the executive
21 commissioner of the Health and Human Services Commission shall
22 adopt the rules necessary to implement the changes in law made by
23 this article to Chapter 142, Health and Safety Code.

24 ARTICLE 2. NURSING INSTITUTIONS

25 SECTION 2.01. Subsections (a) and (c), Section 242.005,
26 Health and Safety Code, are amended to read as follows:

27 (a) The department [~~and the attorney general each~~] shall

S.B. No. 223

1 prepare annually a full report of the operation and administration
2 of the department's [~~their respective~~] responsibilities under this
3 chapter, including recommendations and suggestions considered
4 advisable.

5 (c) The department [~~and the attorney general~~] shall submit
6 the required report [~~reports~~] to the governor and the legislature
7 not later than October 1 of each year.

8 SECTION 2.02. Subsection (e), Section 242.032, Health and
9 Safety Code, is amended to read as follows:

10 (e) In making the evaluation required by Subsection (d), the
11 department shall require the applicant or license holder to file a
12 sworn affidavit of a satisfactory compliance history and any other
13 information required by the department to substantiate a
14 satisfactory compliance history relating to each state or other
15 jurisdiction in which the applicant or license holder and any other
16 person described by Subsection (d) operated an institution at any
17 time before [~~during the five-year period preceding~~] the date on
18 which the application is made. The department by rule shall
19 determine what constitutes a satisfactory compliance history. The
20 department may consider and evaluate the compliance history of the
21 applicant and any other person described by Subsection (d) for any
22 period during which the applicant or other person operated an
23 institution in this state or in another state or jurisdiction. The
24 department may also require the applicant or license holder to file
25 information relating to the history of the financial condition of
26 the applicant or license holder and any other person described by
27 Subsection (d) with respect to an institution operated in another

1982
make

S.B. No. 223

1 state or jurisdiction at any time before [~~during the five-year~~
2 ~~period preceding~~] the date on which the application is made.

3 SECTION 2.03. Subsection (b), Section 242.0615, Health and
4 Safety Code, is amended to read as follows:

5 (b) Exclusion of a person under this section must extend for
6 a period of at least two years and [~~but~~] may extend throughout the
7 person's lifetime or existence [~~not exceed a period of 10 years~~].

8 SECTION 2.04. Subsection (e), Section 242.032, Health and
9 Safety Code, as amended by this article, applies only to an
10 application, including a renewal application, filed on or after the
11 effective date of this Act. An application filed before the
12 effective date of this Act is governed by the law in effect when the
13 application was filed, and the former law is continued in effect for
14 that purpose.

15 SECTION 2.05. Subsection (b), Section 242.0615, Health and
16 Safety Code, as amended by this article, applies only to conduct
17 that occurs on or after the effective date of this Act. Conduct
18 that occurs before the effective date of this Act is governed by the
19 law in effect at the time the conduct occurred, and the former law
20 is continued in effect for that purpose.

21 ARTICLE 3. PREVENTION OF CRIMINAL OR FRAUDULENT CONDUCT BY
22 CERTAIN FACILITIES OR PROVIDERS

23 SECTION 3.01. Section 250.001, Health and Safety Code, is
24 amended by amending Subdivision (1) and adding Subdivisions (3-a)
25 and (3-b) to read as follows:

26 (1) "Nurse aide registry" means a list maintained by
27 the [~~Texas~~] Department of Aging and Disability [~~Human~~] Services of

1 nurse aides under the Omnibus Budget Reconciliation Act of 1987
2 (Pub. L. No. 100-203).

3 (3-a) "Financial management services agency" means an
4 entity that contracts with the Department of Aging and Disability
5 Services to serve as a fiscal and employer agent for an individual
6 employer in the consumer-directed service option described by
7 Section 531.051, Government Code.

8 (3-b) "Individual employer" means an individual or
9 legally authorized representative who participates in the
10 consumer-directed service option described by Section 531.051,
11 Government Code, and is responsible for hiring service providers to
12 deliver program services.

13 SECTION 3.02. Section 250.002, Health and Safety Code, is
14 amended by amending Subsection (a) and adding Subsection (c-1) to
15 read as follows:

16 (a) A facility, a regulatory agency, a financial management
17 services agency on behalf of an individual employer, or a private
18 agency on behalf of a facility is entitled to obtain from the
19 Department of Public Safety of the State of Texas criminal history
20 record information maintained by the Department of Public Safety
21 that relates to a person who is:

22 (1) an applicant for employment at a facility other
23 than a facility licensed under Chapter 142;

24 (2) an employee of a facility other than a facility
25 licensed under Chapter 142; [~~or~~]

26 (3) an applicant for employment at or an employee of a
27 facility licensed under Chapter 142 whose employment duties would

JEE
mlu

S.B. No. 223

1 or do involve direct contact with a consumer in the facility; or

2 (4) an applicant for employment by or an employee of an
3 individual employer.

4 (c-1) A financial management services agency shall forward
5 criminal history record information received under this section to
6 the individual employer requesting the information.

7 SECTION 3.03. Section 250.003, Health and Safety Code, is
8 amended by amending Subsection (a) and adding Subsection (c-1) to
9 read as follows:

10 (a) A facility or individual employer may not employ an
11 applicant:

12 (1) if the facility or individual employer determines,
13 as a result of a criminal history check, that the applicant has been
14 convicted of an offense listed in this chapter that bars employment
15 or that a conviction is a contraindication to employment with the
16 consumers the facility or individual employer serves;

17 (2) if the applicant is a nurse aide, until the
18 facility further verifies that the applicant is listed in the nurse
19 aide registry; and

20 (3) until the facility verifies that the applicant is
21 not designated in the registry maintained under this chapter or in
22 the employee misconduct registry maintained under Section 253.007
23 as having a finding entered into the registry concerning abuse,
24 neglect, or mistreatment of a consumer of a facility, or
25 misappropriation of a consumer's property.

26 (c-1) An individual employer shall immediately discharge
27 any employee whose criminal history check reveals conviction of a

JBC
m

S.B. No. 223

crime that bars employment or that the individual employer determines is a contraindication to employment as provided by this chapter.

SECTION 3.04. Section 250.004, Health and Safety Code, is amended to read as follows:

Sec. 250.004. CRIMINAL HISTORY RECORD OF EMPLOYEES.

(a) Identifying information of an employee in a covered facility or of an employee of an individual employer shall be submitted electronically, on disk, or on a typewritten form to the Department of Public Safety to obtain the person's criminal conviction record when the person applies for employment and at other times as the facility or individual employer may determine appropriate. In this subsection, "identifying information" includes:

(1) the complete name, race, and sex of the employee;

(2) any known identifying number of the employee, including social security number, driver's license number, or state identification number; and

(3) the employee's date of birth.

(b) If the Department of Public Safety reports that a person has a criminal conviction of any kind, the conviction shall be reviewed by the facility, the financial management services agency, or the individual employer to determine if the conviction may bar the person from employment in a facility or by the individual employer under Section 250.006 or if the conviction may be a contraindication to employment.

SECTION 3.05. Section 250.005, Health and Safety Code, is amended to read as follows:

1 Sec. 250.005. NOTICE AND OPPORTUNITY TO BE HEARD CONCERNING
2 ACCURACY OF INFORMATION. (a) If a facility, financial management
3 services agency, or individual employer believes that a conviction
4 may bar a person from employment in a facility or by the individual
5 employer under Section 250.006 or may be a contraindication to
6 employment, the facility or individual employer shall notify the
7 applicant or employee.

8 (b) The Department of Public Safety of the State of Texas
9 shall give a person notified under Subsection (a) the opportunity
10 to be heard concerning the accuracy of the criminal history record
11 information and shall notify the facility or individual employer if
12 inaccurate information is discovered.

13 SECTION 3.06. Subsections (a) and (b), Section 250.006,
14 Health and Safety Code, are amended to read as follows:

15 (a) A person for whom the facility or the individual
16 employer is entitled to obtain criminal history record information
17 may not be employed in a facility or by an individual employer if
18 the person has been convicted of an offense listed in this
19 subsection:

20 (1) an offense under Chapter 19, Penal Code (criminal
21 homicide);

22 (2) an offense under Chapter 20, Penal Code
23 (kidnapping and unlawful restraint);

24 (3) an offense under Section 21.02, Penal Code
25 (continuous sexual abuse of young child or children), or Section
26 21.11, Penal Code (indecent with a child);

27 (4) an offense under Section 22.011, Penal Code

1 (sexual assault);
2 (5) an offense under Section 22.02, Penal Code
3 (aggravated assault);
4 (6) an offense under Section 22.04, Penal Code (injury
5 to a child, elderly individual, or disabled individual);
6 (7) an offense under Section 22.041, Penal Code
7 (abandoning or endangering child);
8 (8) an offense under Section 22.08, Penal Code (aiding
9 suicide);
10 (9) an offense under Section 25.031, Penal Code
11 (agreement to abduct from custody);
12 (10) an offense under Section 25.08, Penal Code (sale
13 or purchase of a child);
14 (11) an offense under Section 28.02, Penal Code
15 (arson);
16 (12) an offense under Section 29.02, Penal Code
17 (robbery);
18 (13) an offense under Section 29.03, Penal Code
19 (aggravated robbery);
20 (14) an offense under Section 21.08, Penal Code
21 (indecent exposure);
22 (15) an offense under Section 21.12, Penal Code
23 (improper relationship between educator and student);
24 (16) an offense under Section 21.15, Penal Code
25 (improper photography or visual recording);
26 (17) an offense under Section 22.05, Penal Code
27 (deadly conduct);

782
mlem

S.B. No. 223

- 1 (18) an offense under Section 22.021, Penal Code
2 (aggravated sexual assault);
- 3 (19) an offense under Section 22.07, Penal Code
4 (terroristic threat);
- 5 (20) an offense under Section 33.021, Penal Code
6 (online solicitation of a minor);
- 7 (21) an offense under Section 34.02, Penal Code (money
8 laundering);
- 9 (22) an offense under Section 35A.02, Penal Code
10 (Medicaid fraud);
- 11 (23) an offense under Section 42.09, Penal Code
12 (cruelty to animals); or
- 13 (24) a conviction under the laws of another state,
14 federal law, or the Uniform Code of Military Justice for an offense
15 containing elements that are substantially similar to the elements
16 of an offense listed by this subsection.
- 17 (b) A person may not be employed in a position the duties of
18 which involve direct contact with a consumer in a facility or may
19 not be employed by an individual employer before the fifth
20 anniversary of the date the person is convicted of:
- 21 (1) an offense under Section 22.01, Penal Code
22 (assault), that is punishable as a Class A misdemeanor or as a
23 felony;
- 24 (2) an offense under Section 30.02, Penal Code
25 (burglary);
- 26 (3) an offense under Chapter 31, Penal Code (theft),
27 that is punishable as a felony;

JABE
MKE

S.B. No. 223

(4) an offense under Section 32.45, Penal Code (misapplication of fiduciary property or property of a financial institution), that is punishable as a Class A misdemeanor or a felony;

(5) an offense under Section 32.46, Penal Code (securing execution of a document by deception), that is punishable as a Class A misdemeanor or a felony;

(6) an offense under Section 37.12, Penal Code (false identification as peace officer); or

(7) an offense under Section 42.01(a)(7), (8), or (9), Penal Code (disorderly conduct).

SECTION 3.07. Subsections (a) and (b), Section 250.007, Health and Safety Code, are amended to read as follows:

(a) The criminal history records are for the exclusive use of the regulatory agency, the requesting facility, the private agency on behalf of the requesting facility, the financial management services agency on behalf of the individual employer, the individual employer, and the applicant or employee who is the subject of the records.

(b) All criminal records and reports and the information they contain that are received by the regulatory agency or private agency for the purpose of being forwarded to the requesting facility or received by the financial management services agency under this chapter are privileged information.

SECTION 3.08. Subsection (a), Section 250.009, Health and Safety Code, is amended to read as follows:

(a) A facility, ~~[or]~~ an officer or employee of a facility, a

1 financial management services agency, or an individual employer is
2 not civilly liable for failure to comply with this chapter if the
3 facility, financial management services agency, or individual
4 employer makes a good faith effort to comply.

5 SECTION 3.09. Subsection (c), Section 247.050, Health and
6 Safety Code, is amended to read as follows:

7 (c) The department [~~and the attorney general~~] shall file a
8 copy of the quarterly reports required by this section with the
9 substantive committees of each house of the legislature with
10 jurisdiction over regulation of assisted living facilities.

11 SECTION 3.10. Section 411.1143, Government Code, is amended
12 by amending Subsection (a) and adding Subsection (a-1) to read as
13 follows:

14 (a) The Health and Human Services Commission, [~~ex~~] an agency
15 operating part of the medical assistance program under Chapter 32,
16 Human Resources Code, or the office of inspector general
17 established under Chapter 531, Government Code, is entitled to
18 obtain from the department the criminal history record information
19 maintained by the department that relates to a provider under the
20 medical assistance program or a person applying to enroll as a
21 provider under the medical assistance program.

22 (a-1) Criminal history record information an agency or the
23 office of inspector general is authorized to obtain under
24 Subsection (a) includes criminal history record information
25 relating to:

26 (1) a person with a direct or indirect ownership or
27 control interest, as defined by 42 C.F.R. Section 455.101, in a

1 provider of five percent or more; and

2 (2) a person whose information is required to be
3 disclosed in accordance with 42 C.F.R. Part 1001.

4 SECTION 3.11. Subdivision (2), Subsection (g), Section
5 531.102, Government Code, is amended to read as follows:

6 (2) In addition to other instances authorized under
7 state or federal law, the office shall impose without prior notice a
8 hold on payment of claims for reimbursement submitted by a provider
9 to compel production of records, ~~[or]~~ when requested by the state's
10 Medicaid fraud control unit, or on receipt of reliable evidence
11 that the circumstances giving rise to the hold on payment involve
12 fraud or wilful misrepresentation under the state Medicaid program
13 in accordance with 42 C.F.R. Section 455.23, as applicable. The
14 office must notify the provider of the hold on payment in accordance
15 with 42 C.F.R. Section 455.23(b) [not later than the fifth working
16 day after the date the payment hold is imposed].

17 SECTION 3.12. The heading to Section 531.1031, Government
18 Code, is amended to read as follows:

19 Sec. 531.1031. DUTY TO EXCHANGE INFORMATION [~~REGARDING~~
20 ~~ALLEGATIONS OF MEDICAID FRAUD OR ABUSE~~].

21 SECTION 3.13. Subdivision (2), Subsection (a), Section
22 531.1031, Government Code, is amended to read as follows:

23 (2) "Participating agency" means:

24 (A) the Medicaid fraud enforcement divisions of
25 the office of the attorney general; ~~[and]~~

26 (B) each board or agency with authority to
27 license, register, regulate, or certify a health care professional

1 or managed care organization that may participate in the state
2 Medicaid program; and

3 (C) the commission's office of inspector
4 general.

5 SECTION 3.14. Section 531.1031, Government Code, is amended
6 by amending Subsections (b) and (c) and adding Subsection (c-1) to
7 read as follows:

8 (b) This section applies only to criminal history record
9 information held by a participating agency that relates to a health
10 care professional and information held by a participating agency
11 that relates to a health care professional or managed care
12 organization that is the subject of an investigation by a
13 participating agency for alleged fraud or abuse under the state
14 Medicaid program.

15 (c) A participating agency may submit to another
16 participating agency a written request for information described by
17 Subsection (b) regarding a health care professional or managed care
18 organization [~~that is the subject of an investigation by the~~
19 ~~participating agency to any other participating agency~~]. The
20 participating agency that receives the request shall provide the
21 requesting agency with the information regarding the health care
22 professional or managed care organization unless:

23 (1) the release of the information would jeopardize an
24 ongoing investigation or prosecution by the participating agency
25 with possession of the information; or

26 (2) the release of the information is prohibited by
27 other law.

1 (c-1) Notwithstanding any other law, a participating agency
2 may enter into a memorandum of understanding or agreement with
3 another participating agency for the purpose of exchanging criminal
4 history record information relating to a health care professional
5 that both participating agencies are authorized to access under
6 Chapter 411. Confidential criminal history record information in
7 the possession of a participating agency that is provided to
8 another participating agency in accordance with this subsection
9 remains confidential while in the possession of the participating
10 agency that receives the information.

11 SECTION 3.15. Section 32.0322, Human Resources Code, is
12 amended to read as follows:

13 Sec. 32.0322. CRIMINAL HISTORY RECORD INFORMATION;
14 ENROLLMENT OF PROVIDERS. (a) The department or the office of
15 inspector general established under Chapter 531, Government Code,
16 may obtain from any law enforcement or criminal justice agency the
17 criminal history record information that relates to a provider
18 under the medical assistance program or a person applying to enroll
19 as a provider under the medical assistance program.

20 (a-1) . The criminal history record information the
21 department and the office of inspector general are authorized to
22 obtain under Subsection (a) includes criminal history record
23 information relating to:

24 (1) a person with a direct or indirect ownership or
25 control interest, as defined by 42 C.F.R. Section 455.101, in a
26 provider of five percent or more; and

27 (2) a person whose information is required to be

1 disclosed in accordance with 42 C.F.R. Part 1001.

2 (b) The executive commissioner of the Health and Human
3 Services Commission [~~department~~] by rule shall establish criteria
4 for the department or the commission's office of inspector general
5 to suspend a provider's billing privileges under the medical
6 assistance program, revoke [~~revoking~~] a provider's enrollment
7 under the program, or deny [~~denying~~] a person's application to
8 enroll as a provider under the [~~medical assistance~~] program based
9 on:

10 (1) the results of a criminal history check;

11 (2) any exclusion or debarment of the provider from
12 participation in a state or federally funded health care program;

13 (3) the provider's failure to bill for medical
14 assistance or refer clients for medical assistance within a
15 12-month period; or

16 (4) any of the provider screening or enrollment
17 provisions contained in 42 C.F.R. Part 455, Subpart E.

18 (c) As a condition of eligibility to participate as a
19 provider in the medical assistance program, the executive
20 commissioner of the Health and Human Services Commission by rule
21 shall:

22 (1) require a provider or a person applying to enroll
23 as a provider to disclose:

24 (A) all persons described by Subsection
25 (a-1)(1);

26 (B) any managing employees of the provider; and

27 (C) an agent or subcontractor of the provider if:

1 (i) the provider or a person described by
2 Subsection (a-1)(1) has a direct or indirect ownership interest of
3 at least five percent in the agent or subcontractor; or

4 (ii) the provider engages in a business
5 transaction with the agent or subcontractor that meets the criteria
6 specified by 42 C.F.R. Section 455.105; and

7 (2) require disclosure by persons applying for
8 enrollment as providers and provide for screening of applicants for
9 enrollment in conformity and compliance with the requirements of 42
10 C.F.R. Part 455, Subparts B and E.

11 (d) In adopting rules under this section, the executive
12 commissioner of the Health and Human Services Commission shall
13 adopt rules as authorized by and in conformity with 42 C.F.R.
14 Section 455.470 for the imposition of a temporary moratorium on
15 enrollment of new providers, or to impose numerical caps or other
16 limits on the enrollment of providers, that the department or the
17 commission's office of inspector general, in consultation with the
18 department, determines have a significant potential for fraud,
19 waste, or abuse.

20 SECTION 3.16. Section 32.039, Human Resources Code, is
21 amended by amending Subsection (b) and adding Subsection (b-1) to
22 read as follows:

23 (b) A person commits a violation if the person:

24 (1) presents or causes to be presented to the
25 department a claim that contains a statement or representation the
26 person knows or should know to be false;

27 (1-a) engages in conduct that violates Section

1 102.001, Occupations Code;

2 (1-b) solicits or receives, directly or indirectly,
3 overtly or covertly any remuneration, including any kickback,
4 bribe, or rebate, in cash or in kind for referring an individual to
5 a person for the furnishing of, or for arranging the furnishing of,
6 any item or service for which payment may be made, in whole or in
7 part, under the medical assistance program, provided that this
8 subdivision does not prohibit the referral of a patient to another
9 practitioner within a multispecialty group or university medical
10 services research and development plan (practice plan) for
11 medically necessary services;

12 (1-c) solicits or receives, directly or indirectly,
13 overtly or covertly any remuneration, including any kickback,
14 bribe, or rebate, in cash or in kind for purchasing, leasing, or
15 ordering, or arranging for or recommending the purchasing, leasing,
16 or ordering of, any good, facility, service, or item for which
17 payment may be made, in whole or in part, under the medical
18 assistance program;

19 (1-d) offers or pays, directly or indirectly, overtly
20 or covertly any remuneration, including any kickback, bribe, or
21 rebate, in cash or in kind to induce a person to refer an individual
22 to another person for the furnishing of, or for arranging the
23 furnishing of, any item or service for which payment may be made, in
24 whole or in part, under the medical assistance program, provided
25 that this subdivision does not prohibit the referral of a patient to
26 another practitioner within a multispecialty group or university
27 medical services research and development plan (practice plan) for

1 medically necessary services;

2 (1-e) offers or pays, directly or indirectly, overtly
3 or covertly any remuneration, including any kickback, bribe, or
4 rebate, in cash or in kind to induce a person to purchase, lease, or
5 order, or arrange for or recommend the purchase, lease, or order of,
6 any good, facility, service, or item for which payment may be made,
7 in whole or in part, under the medical assistance program;

8 (1-f) provides, offers, or receives an inducement in a
9 manner or for a purpose not otherwise prohibited by this section or
10 Section 102.001, Occupations Code, to or from a person, including a
11 recipient, provider, employee or agent of a provider, third-party
12 vendor, or public servant, for the purpose of influencing or being
13 influenced in a decision regarding:

14 (A) selection of a provider or receipt of a good
15 or service under the medical assistance program;

16 (B) the use of goods or services provided under
17 the medical assistance program; or

18 (C) the inclusion or exclusion of goods or
19 services available under the medical assistance program; [~~or~~]

20 (2) is a managed care organization that contracts with
21 the department to provide or arrange to provide health care
22 benefits or services to individuals eligible for medical assistance
23 and:

24 (A) fails to provide to an individual a health
25 care benefit or service that the organization is required to
26 provide under the contract with the department;

27 (B) fails to provide to the department

1 information required to be provided by law, department rule, or
2 contractual provision;

3 (C) engages in a fraudulent activity in
4 connection with the enrollment in the organization's managed care
5 plan of an individual eligible for medical assistance or in
6 connection with marketing the organization's services to an
7 individual eligible for medical assistance; or

8 (D) engages in actions that indicate a pattern
9 of:

10 (i) wrongful denial of payment for a health
11 care benefit or service that the organization is required to
12 provide under the contract with the department; or

13 (ii) wrongful delay of at least 45 days or a
14 longer period specified in the contract with the department, not to
15 exceed 60 days, in making payment for a health care benefit or
16 service that the organization is required to provide under the
17 contract with the department; or

18 (3) fails to maintain documentation to support a claim
19 for payment in accordance with the requirements specified by
20 department rule or medical assistance program policy or engages in
21 any other conduct that a department rule has defined as a violation
22 of the medical assistance program.

23 (b-1) A person who commits a violation described by
24 Subsection (b)(3) is liable to the department for either the amount
25 paid in response to the claim for payment or the payment of an
26 administrative penalty in an amount not to exceed \$500 for each
27 violation, as determined by the department.

SECTION 3.17. Subsection (a), Section 103.009, Human Resources Code, is amended to read as follows:

(a) The department may deny, suspend, or revoke the license of an applicant or holder of a license who fails to comply with the rules or standards for licensing required by this chapter or has committed an act described by Sections 103.012(a)(2)-(7).

SECTION 3.18 Subsection (b), Section 247.050, Health and Safety Code, is repealed.

ARTICLE 4. ADULT DAY-CARE FACILITIES

SECTION 4.01. Chapter 103, Human Resources Code, is amended by adding Sections 103.012 through 103.016 to read as follows:

Sec. 103.012. ADMINISTRATIVE PENALTY. (a) The department may assess an administrative penalty against a person who:

(1) violates this chapter, a rule, standard, or order adopted under this chapter, or a term of a license issued under this chapter;

(2) makes a false statement of a material fact that the person knows or should know is false:

(A) on an application for issuance or renewal of a license or in an attachment to the application; or

(B) with respect to a matter under investigation by the department;

(3) refuses to allow a representative of the department to inspect:

(A) a book, record, or file required to be maintained by an adult day-care facility; or

(B) any portion of the premises of an adult

day-care facility;

(4) wilfully interferes with the work of a representative of the department or the enforcement of this chapter;

(5) wilfully interferes with a representative of the department preserving evidence of a violation of this chapter, a rule, standard, or order adopted under this chapter, or a term of a license issued under this chapter;

(6) fails to pay a penalty assessed under this chapter not later than the 30th day after the date the assessment of the penalty becomes final; or

(7) fails to notify the department of a change of ownership before the effective date of the change of ownership.

(b) Except as provided by Section 103.013(c), the penalty may not exceed \$500 for each violation.

(c) Each day of a continuing violation constitutes a separate violation.

(d) The department shall establish gradations of penalties in accordance with the relative seriousness of the violation.

(e) In determining the amount of a penalty, the department shall consider any matter that justice may require, including:

(1) the gradations of penalties established under Subsection (d);

(2) the seriousness of the violation, including the nature, circumstances, extent, and gravity of the prohibited act and the hazard or potential hazard created by the act to the health or safety of the public;

(3) the history of previous violations;

(4) the deterrence of future violations; and

(5) the efforts to correct the violation.

(f) A penalty assessed under Subsection (a)(6) is in addition to the penalty previously assessed and not timely paid.

Sec. 103.013. RIGHT TO CORRECT BEFORE IMPOSITION OF ADMINISTRATIVE PENALTY. (a) The department may not collect an administrative penalty from an adult day-care facility under Section 103.012 if, not later than the 45th day after the date the facility receives notice under Section 103.014(c), the facility corrects the violation.

(b) Subsection (a) does not apply to:

(1) a violation that the department determines:

(A) results in serious harm to or death of a person attending the facility;

(B) constitutes a serious threat to the health and safety of a person attending the facility; or

(C) substantially limits the facility's capacity to provide care;

(2) a violation described by Sections 103.012(a)(2)-(7); or

(3) a violation of Section 103.011.

(c) An adult day-care facility that corrects a violation must maintain the correction. If the facility fails to maintain the correction until at least the first anniversary after the date the correction was made, the department may assess and collect an administrative penalty for the subsequent violation. An

1 administrative penalty assessed under this subsection is equal to
2 three times the amount of the original penalty assessed but not
3 collected. The department is not required to provide the facility
4 with an opportunity under this section to correct the subsequent
5 violation.

6 Sec. 103.014. REPORT RECOMMENDING ADMINISTRATIVE PENALTY;
7 NOTICE. (a) The department shall issue a preliminary report
8 stating the facts on which the department concludes that a
9 violation of this chapter, a rule, standard, or order adopted under
10 this chapter, or a term of a license issued under this chapter has
11 occurred if the department has:

12 (1) examined the possible violation and facts
13 surrounding the possible violation; and

14 (2) concluded that a violation has occurred.

15 (b) The report may recommend a penalty under Section 103.012
16 and the amount of the penalty.

17 (c) The department shall give written notice of the report
18 to the person charged with the violation not later than the 10th day
19 after the date on which the report is issued. The notice must
20 include:

21 (1) a brief summary of the charges;

22 (2) a statement of the amount of penalty recommended;

23 (3) a statement of whether the violation is subject to
24 correction under Section 103.013 and, if the violation is subject
25 to correction under that section, a statement of:

26 (A) the date on which the adult day-care facility
27 must file a plan of correction with the department that the

1 department shall review and may approve, if satisfactory; and

2 (B) the date on which the plan of correction must
3 be completed to avoid assessment of the penalty; and

4 (4) a statement that the person charged has a right to
5 a hearing on the occurrence of the violation, the amount of the
6 penalty, or both.

7 (d) Not later than the 20th day after the date on which the
8 notice under Subsection (c) is received, the person charged may:

9 (1) give to the department written notice that the
10 person agrees with the department's report and consents to the
11 recommended penalty; or

12 (2) make a written request for a hearing.

13 (e) If the violation is subject to correction under Section
14 103.013, the adult day-care facility shall submit a plan of
15 correction to the department for approval not later than the 10th
16 day after the date on which the notice under Subsection (c) is
17 received.

18 (f) If the violation is subject to correction under Section
19 103.013 and the person reports to the department that the violation
20 has been corrected, the department shall inspect the correction or
21 take any other step necessary to confirm the correction and shall
22 notify the person that:

23 (1) the correction is satisfactory and a penalty will
24 not be assessed; or

25 (2) the correction is not satisfactory and a penalty
26 is recommended.

27 (g) Not later than the 20th day after the date on which a

notice under Subsection (f)(2) is received, the person charged with the violation may:

(1) give to the department written notice that the person agrees with the department's report and consents to the recommended penalty; or

(2) make a written request for a hearing.

(h) If the person charged with the violation consents to the penalty recommended by the department or does not timely respond to a notice sent under Subsection (c) or (f)(2), the department's commissioner or the commissioner's designee shall assess the penalty recommended by the department.

(i) If the department's commissioner or the commissioner's designee assesses the recommended penalty, the department shall give written notice of the decision to the person charged with the violation and the person shall pay the penalty.

Sec. 103.015. ADMINISTRATIVE PENALTY HEARING. (a) An administrative law judge shall order a hearing and give notice of the hearing if a person assessed a penalty under Section 103.013(c) requests a hearing.

(b) The hearing shall be held before an administrative law judge.

(c) The administrative law judge shall make findings of fact and conclusions of law regarding the occurrence of a violation of this chapter, a rule or order adopted under this chapter, or a term of a license issued under this chapter.

(d) Based on the findings of fact and conclusions of law, and the recommendation of the administrative law judge, the

1 department's commissioner or the commissioner's designee by order
2 shall find:

3 (1) a violation has occurred and assess an
4 administrative penalty; or

5 (2) a violation has not occurred.

6 (e) Proceedings under this section are subject to Chapter
7 2001, Government Code.

8 Sec. 103.016. NOTICE AND PAYMENT OF ADMINISTRATIVE PENALTY;
9 INTEREST; REFUND. (a) The department's commissioner or the
10 commissioner's designee shall give notice of the findings made
11 under Section 103.015(d) to the person charged with a violation. If
12 the commissioner or the commissioner's designee finds that a
13 violation has occurred, the commissioner or the commissioner's
14 designee shall give to the person charged written notice of:

15 (1) the findings;

16 (2) the amount of the administrative penalty;

17 (3) the rate of interest payable with respect to the
18 penalty and the date on which interest begins to accrue; and

19 (4) the person's right to judicial review of the order
20 of the commissioner or the commissioner's designee.

21 (b) Not later than the 30th day after the date on which the
22 order of the department's commissioner or the commissioner's
23 designee is final, the person assessed the penalty shall:

24 (1) pay the full amount of the penalty; or

25 (2) file a petition for judicial review contesting the
26 occurrence of the violation, the amount of the penalty, or both the
27 occurrence of the violation and the amount of the penalty.

1 (c) Notwithstanding Subsection (b), the department may
2 permit the person to pay a penalty in installments.

3 (d) If the person does not pay the penalty within the period
4 provided by Subsection (b) or in accordance with Subsection (c), if
5 applicable:

6 (1) the penalty is subject to interest; and

7 (2) the department may refer the matter to the
8 attorney general for collection of the penalty and interest.

9 (e) Interest under Subsection (d)(1) accrues:

10 (1) at a rate equal to the rate charged on loans to
11 depository institutions by the New York Federal Reserve Bank; and

12 (2) for the period beginning on the day after the date
13 on which the penalty becomes due and ending on the date the penalty
14 is paid.

15 (f) If the amount of the penalty is reduced or the
16 assessment of a penalty is not upheld on judicial review, the
17 department's commissioner or the commissioner's designee shall:

18 (1) remit to the person charged the appropriate amount
19 of any penalty payment plus accrued interest; or

20 (2) execute a release of the supersedeas bond if one
21 has been posted.

22 (g) Accrued interest on the amount remitted by the
23 department's commissioner or the commissioner's designee under
24 Subsection (f)(1) shall be paid:

25 (1) at a rate equal to the rate charged on loans to
26 depository institutions by the New York Federal Reserve Bank; and

27 (2) for the period beginning on the date the penalty is

1 paid and ending on the date the penalty is remitted to the person
2 charged with the violation.

3 ARTICLE 5. TRAINING AND CONTINUING EDUCATION RELATED TO
4 CERTAIN LONG-TERM CARE FACILITIES

5 SECTION 5.01. Subsection (c), Section 22.039, Human
6 Resources Code, is amended to read as follows:

7 (c) The department shall semiannually provide training for
8 surveyors and providers on subjects that address ~~[at least one of]~~
9 the 10 most common violations by long-term care facilities of
10 ~~[under]~~ federal or state law. The department may charge providers a
11 fee not to exceed \$50 per person for the training.

12 SECTION 5.02. As soon as practicable after the effective
13 date of this Act but not later than July 1, 2012, the executive
14 commissioner of the Health and Human Services Commission shall
15 adopt rules necessary to implement Section 22.039, Human Resources
16 Code, as amended by this article.

17 ARTICLE 6. WAIVER; EFFECTIVE DATE

18 SECTION 6.01. If before implementing any provision of this
19 Act a state agency determines that a waiver or authorization from a
20 federal agency is necessary for implementation of that provision,
21 the agency affected by the provision shall request the waiver or
22 authorization and may delay implementing that provision until the
23 waiver or authorization is granted.

24 SECTION 6.02. This Act takes effect September 1, 2011.

dkc 6/2

S.B. No. 223

David Newkumst

President of the Senate

Joe Straus

Speaker of the House

I hereby certify that S.B. No. 223 passed the Senate on April 14, 2011, by the following vote: Yeas 31, Nays 0; and that the Senate concurred in House amendments on May 28, 2011, by the following vote: Yeas 31, Nays 0.

Patry Spaw

Secretary of the Senate

I hereby certify that S.B. No. 223 passed the House, with amendments, on May 24, 2011, by the following vote: Yeas 146, Nays 0, two present not voting.

Robert Haney

Chief Clerk of the House

Approved:

17 JUN '11

Date

Rick Perry

Governor

FILED IN THE OFFICE OF THE
SECRETARY OF STATE
JUN 17 2011
O'CLOCK

Boyd Roberts

Secretary of State